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## Temporary Family Health Care Dwellings of 2016 Allowing Temporary Structures – What it means for Cities

### Introduction:

On May 12, 2016, Gov. Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.<sup>1</sup> Community desire to provide transitional housing for those with mental or physical impairments and the increased need for short term care for aging family members served as the catalysts behind the legislature taking on this initiative. The resulting legislation sets forth a short term care alternative for a “mentally or physically impaired person”, by allowing them to stay in a “temporary dwelling” on a relative’s or caregiver’s property.<sup>2</sup>

### Where can I read the new law?

Until the state statutes are revised to include bills passed this session, cities can find this new bill at [2016 Laws, Chapter 111](#).

### Does the law require cities to follow and implement the new temporary family health care dwelling law?

Yes, unless a city opts out of the new law or currently allows temporary family health care dwellings as a permitted use.

### Considerations for cities regarding the opt-out?

These new temporary dwellings address an emerging community need to provide more convenient temporary care. When analyzing whether or not to opt out, cities may want to consider that:

- The new law alters a city’s level of zoning authority for these types of structures.
- While the city’s zoning ordinances for accessories or recreational vehicles do not apply, these structures still must comply with setback requirements.
- A city’s zoning and other ordinances, other than its accessory use or recreational vehicle ordinances, still apply to these structures. Because conflicts may arise between the statute and a city’s local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

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<sup>1</sup> 2016 Laws, Chapter 111.

<sup>2</sup> Some cities asked if other states have adopted this type of law. The only states that have a somewhat similar statute at the time of publication of this FAQ are North Carolina and Virginia. It is worth noting that some states have adopted Accessory Dwelling Unit (ADU) statutes to allow granny flats, however, these ADU statutes differ from Minnesota’s Temporary Health Care Dwelling law.

- Although not necessarily a legal issue for the city, it seems worth mentioning that the permit process does not have the individual with the physical or mental impairment or that individual's power of attorney sign the permit application or a consent to release his or her data.
- The application's data requirements may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act.
- The new law sets forth a permitting system for both cities and counties<sup>3</sup>. Cities should consider whether there is an interplay between these two statutes.

### **Do cities need to do anything to have the new law apply in their city?**

**No**, the law goes into effect Sept. 1, 2016 and automatically applies to all cities that do not opt out or don't already allow temporary family health care dwellings as a permitted use under their local ordinances.

### **Do cities lose the option to opt out after the Sept. 1, 2016 effective date?**

**No**, the law does not set a deadline for opting out, so cities can opt out after Sept. 1, 2016.

However, if the city has not opted out by Sept. 1, 2016, then the city must not only have determined a permit fee amount<sup>4</sup> before that date (if the city wants to have an amount different than the law's default amount), but also must be ready on that date to accept applications and process the permits in accordance with the short timeline required by the law. Cities should consult their city attorney to analyze how to handle applications submitted after Sept. 1, 2016, but still pending at the time of a later opt out.

### **What if a city already allows a temporary family health care dwelling as a permitted use?**

If the city already has designated temporary family health care dwellings as a permitted use, then the law does not apply and the city follows its own ordinance. The city should consult its city attorney for any uncertainty about whether structures currently permitted under existing ordinances qualify as temporary family health care dwellings.

### **What process should the city follow if it chooses to opt out of this statute?**

Cities that wish to opt out of this law must pass an ordinance to do so. The statute does not provide clear guidance on how to treat this opt-out ordinance. However, since the new law adds section 462.3593 to the land use planning act (Minn. Stat. ch. 462), arguably, it may represent the adoption or an amendment of a zoning ordinance, triggering the requirements of Minn. Stat. § 462.357, subd. 2-4, including a public hearing with 10-day published notice. Therefore, cities may want to err on the side of caution and treat the opt-out ordinance as a zoning provision.<sup>5</sup>

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<sup>3</sup> See Minn. Stat. §394.307

<sup>4</sup> Cities do have flexibility as to amounts of the permit fee. The law sets, as a default, a fee of \$100 for the initial permit with a \$50 renewal fee, but authorizes a city to provide otherwise by ordinance.

<sup>5</sup> For smaller communities without zoning at all, those cities still need to adopt an opt-out ordinance. In those instances, it seems less likely that the opt-out ordinance would equate to zoning. Because of the ambiguity of the

### **Does the League have a model ordinance for opting out of this program?**

**Yes.** Link to opt out ordinance here: [Temporary Family Health Care Dwellings Ordinance](#)

### **Can cities partially opt out of the temporary family health care dwelling law?**

**Not likely.** The opt-out language of the statute allows a city, by ordinance, to opt out of the requirements of the law but makes no reference to opting out of parts of the law. If a city wanted a program different from the one specified in statute, the most conservative approach would be to opt out of the statute, then adopt an ordinance structured in the manner best suited to the city. Since the law does not explicitly provide for a partial opt out, cities wanting to just partially opt out from the statute should consult their city attorney.

### **Can a city adopt pieces of this program or change the requirements listed in the statute?**

Similar to the answer about partially opting out, the law does not specifically authorize a city to alter the statutory requirements or adopt only just pieces of the statute. Several cities have asked if they could add additional criteria, like regulating placement on driveways, specific lot size limits, or anchoring requirements. As mentioned above, if a city wants a program different from the one specified in the statute, the most conservative approach would involve opting out of the statute in its entirety and then adopting an ordinance structured in the manner best suited to the city. Again, a city should consult its city attorney when considering adopting an altered version of the state law.

### **What is required in an application for a temporary family health care dwelling permit?**

The mandatory application requests very specific information including, but not limited to:<sup>6</sup>

- Name, address, and telephone number of the property owner, the resident of the property (if different than the owner), and the primary care giver;
- Name of the mentally or physically impaired person;
- Proof of care from a provider network, including respite care, primary care or remote monitoring;
- Written certification signed by a Minnesota licensed physician, physician assistant or advanced practice registered nurse that the individual with the mental or physical impairment needs assistance performing two or more “instrumental activities of daily life;”<sup>7</sup>

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statute, cities should consult their city attorneys on how best to approach adoption of the opt-out ordinance for their communities.

<sup>6</sup> New Minn. Stat. § 462.3593, subd. 3 sets forth all the application criteria.

<sup>7</sup> This is a term defined in law at Minn. Stat. § 256B.0659, subd. 1(i) as “activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.”

- An executed contract for septic sewer management or other proof of adequate septic sewer management;
- An affidavit that the applicant provided notice to adjacent property owners and residents;
- A general site map showing the location of the temporary dwelling and the other structures on the lot; and
- Compliance with setbacks and maximum floor area requirements of primary structure.

The law requires all of the following to sign the application: the primary caregiver, the owner of the property (on which the temporary dwelling will be located) and the resident of the property (if not the same as the property owner). However, neither the physically disabled or mentally impaired individual nor his or her power of attorney signs the application.

### **Who can host a temporary family health care dwelling?**

Placement of a temporary family health care dwelling can only be on the property where a "caregiver" or "relative" resides. The statute defines caregiver as "an individual, 18 years of age or older, who: (1) provides care for a mentally or physically impaired person; and (2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring." The definition of "relative" includes "a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece of the mentally or physically impaired person. Relative also includes half, step and in-law relationships."

### **Is this program just for the elderly?**

**No.** The legislature did not include an age requirement for the mentally or physically impaired dweller.<sup>8</sup>

### **Who can live in a temporary family health care dwelling and for how long?**

The permit for a temporary health care dwelling must name the person eligible to reside in the unit. The law requires the person residing in the dwelling to qualify as "mentally or physically impaired," defined as "a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified by a physician, a physician assistant, or an advanced practice registered nurse, licenses to practice in this state." The law specifically limits the time frame for these temporary dwellings permits to 6 months, with a one-time 6 month renewal option. Further, there can be only one dwelling per lot and only one dweller who resides within the temporary dwelling

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<sup>8</sup> The law expressly exempts a temporary family health care dwelling from being considered "housing with services establishment", which, in turn, results in the 55 or older age restriction set forth for "housing with services establishment" not applying.

### **What structures qualify as temporary family health care dwellings under the new law?**

The specific structural requirements set forth in the law preclude using pop up campers on the driveway or the “granny flat” with its own foundation as a temporary structure. Qualifying temporary structures must:

- Primarily be pre-assembled;
- Cannot exceed 300 gross square feet;
- Cannot attach to a permanent foundation;
- Must be universally designed and meet state accessibility standards;
- Must provide access to water and electrical utilities (by connecting to principal dwelling or by other comparable means<sup>9</sup>);
- Must have compatible standard residential construction exterior materials;
- Must have minimum insulation of R-15;
- Must be portable (as defined by statute);
- Must comply with Minnesota Rules chapter 1360 (prefabricated buildings) or 1361 (industrialized/modular buildings), “and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2”<sup>10</sup>; and
- Must contain a backflow check valve.<sup>11</sup>

### **Does the State Building Code apply to the construction of a temporary family health care dwelling?**

**Mostly, no.** These structures must meet accessibility standards (which are in the State Building Code). The primary types of dwellings proposed fall within the classification of recreational vehicles, to which the State Building Code does not apply. Two other options exist, however, for these types of dwellings. If these structures represent a pre-fabricated home, the federal building code requirements for manufactured homes apply (as stated in Minnesota Rules, Chapter 1360). If these structures are modular homes, on the other hand, they must be constructed consistent with the State Building Code (as stated in Minnesota Rules, Chapter 1361).

### **What health, safety and welfare requirements does this new law include?**

Aside from the construction requirements of the unit, the temporary family health care dwelling must be located in an area on the property where “septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.”

### **What local ordinances and zoning apply to a temporary health care dwelling?**

The new law states that ordinances related to accessory uses and recreational vehicle storage and parking do not apply to these temporary family health care dwellings.

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<sup>9</sup> The Legislature did not provide guidance on what represents “other comparable means”.

<sup>10</sup> ANSI Code 119.2 has been superseded by NFPA 1192. For more information, the American National Standards Institute website is located at <https://www.ansi.org/>.

<sup>11</sup> New Minn. Stat. § 462.3593, subd. 2 sets forth all the structure criteria.

However, unless otherwise provided, setbacks and other local ordinances, charter provisions, and applicable state laws still apply. Because conflicts may arise between the statute and one or more of the city's other local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

### **What permit process should cities follow for these permits?**

The law creates a new type of expedited permit process. The permit approval process found in Minn. Stat. § 15.99 generally applies; however, the new law shortens the time frame within which the local governmental unit can make a decision on the permit. Due to the time sensitive nature of issuing a temporary dwelling permit, the city does not have to hold a public hearing on the application and has only 15 days (rather than 60 days) to either issue or deny a permit. For those councils that regularly meet only once a month, the law provides for a 30-day decision. The law specifically prohibits cities from extending the time for making a decision on the permit application. The new law allows the clock to restart if a city deems an application incomplete, but the city must provide the applicant written notice within five business days of receipt of the application identifying the missing information.

### **Can cities collect fees for these permits?**

Cities have flexibility as to amounts of the permit fee. The law sets the fee at \$100 for the initial permit with a \$50 renewal fee, unless a city provides otherwise by ordinance.

### **Can cities inspect, enforce and ultimately revoke these permits?**

**Yes**, but only if the permit holder violates the requirements of the law. The statute allows for the city to require the permit holder to provide evidence of compliance and also authorizes the city to inspect the temporary dwelling at times convenient to the caregiver to determine compliance. The permit holder then has sixty (60) days from the date of revocation to remove the temporary family health care dwelling. The law does not address appeals of a revocation.

### **How should cities handle data it acquires from these permits?**

The application data may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act. To minimize collection of protected health data or other nonpublic data, the city could, for example, request that the required certification of need simply state "that the person who will reside in the temporary family health care dwelling needs assistance with two or more instrumental activities of daily living", without including in that certification data or information about the specific reasons for the assistance, the types of assistance, the medical conditions or the treatment plans of the person with the mental illness or physical disability. Because of the complexities surrounding nonpublic data, cities should consult their city attorneys when drafting a permit application.

### **Should the city consult its city attorney?**

**Yes.** As with any new law, to determine the potential impact on cities, the League recommends consulting with your city attorney.

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**Where can cities get additional information or ask other questions.**

For more information, contact Staff Attorney Pamela Whitmore at [pwhitmore@lmc.org](mailto:pwhitmore@lmc.org) or LMC General Counsel Tom Grundhoefer at [tgrundho@lmc.org](mailto:tgrundho@lmc.org). If you prefer calling, you can reach Pamela at 651.281.1224 or Tom at 651.281.1266.